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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,623	09/14/2000	Dennis Cherok	D0188/7125	8712

7590 05/06/2003

Jason M Honeyman  
Wolf Greenfield & Sacks P C  
600 Atlantic Ave  
Boston, MA 02210

EXAMINER

MATTHEWS, WILLIAM H

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 05/06/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/661,623

Applicant(s)

CHEROK ET AL.

Examiner

William H. Matthews (Howie)

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 and 54-59 is/are pending in the application.
- 4a) Of the above claim(s) 8-13 and 22-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-7, 14-21, 29-45, 54-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The After Final Amendment contained cancellation of claims 49-53 on page 1, but the remarks section at page 3 describe claims 46-53 as being cancelled. During a telephone conversation with James Hannifin on April 30, 2003, it was confirmed that page 1 contained a typographical error and the intended cancelled claims are 46-53.

Accordingly, claims 46-53 have been cancelled. Examiner requests confirmation of the cancellation of claims 46-53 in the response to this office action.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 14-17, 20, 29-35, 37-44, 54, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mulhauser et al. US PN 5,766,246.

Mulhauser et al. teaches in figures 2a-2b and 4a-4b and line 38 of col. 3 through line 56 of col. 5 an implantable prosthesis for repairing tissue or muscle wall defects comprising layer of polypropylene repair fabric (12), peripheral barrier (14) having an outer margin that has been melted and resolidified (see lines 64-65 of col. 4), and sutures for attaching the layers together. Mulhauser et al. teaches that during the melting a depression is formed implying a tapered shape. The peripheral barrier (14)

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may be considered a peripheral barrier (at the perimeter edge), a barrier layer (top or bottom of 14), as well as a reinforced bite region (see lines 65 of col. 4 through line 5 of col. 5).

The embodiment of figure 2a-2b does not expressly disclose a barrier layer that covers the entire first surface of the layer of repair fabric. However, the embodiment of figure 4a-4b teaches an additional barrier layer covering the entire surface of the repair fabric in order to prevent undesirable adhesions with nearby organs. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the embodiment in figures 2a-2b by adding the barrier layer of figures 4a-4b in order to prevent undesirable adhesions with nearby organs.

4. Claims 18,19,45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mulhauser et al. US PN 5,766,246 as applied to claims 1,16, 37, and 44 above, and in further view of Sharber et al. US PN 6,075,180.

Mulhauser et al. teaches in figures 2a-2b and 4a-4b and line 38 of col. 3 through line 56 of col. 5 an implantable prosthesis for repairing tissue or muscle wall defects meeting the structural limitations of claims 18,19,45 as described above, but lacks the express disclosure of the suture being made of PTFE or other adhesion resistant material. Sharber et al. teaches in lines 54-67 of col. 1 the well known use of PTFE for implantable sutures because of PTFE's low reactivity in the human body.

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Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the prosthesis disclosed by Mulhauser et al. by using PTFE material for the sutures because of PTFE's low reactivity in the human body.

5. Claims 21,36,55-57,59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mulhauser et al. US PN 5,766,246 as applied to claims 1,20,29,35,54,58 above, and in further view of Gianturco US PN 5,258,000.

Mulhauser et al. teaches in figures 2a-2b and 4a-4b and line 38 of col. 3 through line 56 of col. 5 an implantable prosthesis for repairing tissue or muscle wall defects meeting the structural limitations of claims 21,36,55-57,59 as described above, but lacks the express disclosure of the barrier layer being formed from ePTFE and the plurality of stitches being disposed inward of the outer peripheral edge. Gianturco teaches in lines 34 of col. 4 through line 43 of col. 5 and figures 3-4 an implantable prosthesis for repairing tissue or muscle wall defects comprising a barrier layer 16 and repair fabric layer 13, wherein the barrier layer is made of ePTFE to prevent tissue ingrowth and sutures (17) are located inward of the outer peripheral edge for securely connecting the fabric layers.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the prosthesis disclosed by Mulhauser et al. by using ePTFE material for the barrier layer and sutures located inward of the outer peripheral edge in order to prevent tissue ingrowth and securely connect the fabric and barrier layers.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 703-305-0316. The examiner can normally be reached on Mon-Fri 7:00-4:30 (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2708 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

*WHM*

WHM  
April 30, 2003

*C 2*

CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
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